

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting a high bid in a competitive oil and gas lease sale. W-96653.

Affirmed.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale when the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

The Department is entitled to rely on the reasoned analysis of its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. When an appellant fails to meet its affirmative obligation to establish that its bid is a reasonable reflection of fair market value, a decision by BLM to reject a bid will be sustained.

APPEARANCES: Robert W. Adkins, pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE VOGT

Robert W. Adkins has appealed from a January 7, 1986, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his high bid for competitive oil and gas lease W-96653. Appellant was the sole bidder for parcel 205 in the October 30, 1985, competitive oil and gas lease sale. He submitted a bid of \$3,205 (\$10.01 per acre) for the parcel, which

includes 320 acres in the Church Buttes Known Geologic Structure (KGS), described as the E 1/2 sec. 29, T. 13 N., R. 114 W., sixth principal meridian, Uinta County, Wyoming.

On November 15, 1985, BLM sent appellant a notice of probable rejection of his bid. The notice stated that appellant's bid was lower than the presale estimate of value (PEV) BLM had assigned to the parcel but did not disclose the PEV figure. BLM allowed appellant 15 days from receipt of the notice to submit information to justify his bid. Appellant submitted a response, dated December 3, 1985, which was not received by BLM until December 23, 1985, and was therefore not considered during the initial BLM review process. 1/

On January 7, 1986, BLM issued a decision rejecting appellant's bid. The decision stated:

The presale estimate of value (PEV) for the parcel was based on area sales ranging from \$350/acre to \$1,039/acre. The best comparable sales were an adjacent sale in October 1984 which brought \$980/acre and an inferior sale which brought \$350/acre in March 1984. 2/

Although a sharp drop in interest in this field occurred in the October 1985 sale, your bid is considered to be far below market value based on past sales activity and potential, especially in the Frontier formation.

Since no information was submitted as justification for your \$10.01/acre bid, and since it is less than the PEV, your bid is rejected.

In his statement of reasons on appeal to this Board, appellant objected to the failure of the BLM decision to identify the location of any of the comparable sales used to establish the PEV. He contended that the PEV for parcel 205 was based on out-dated information and that the price of oil had fallen substantially between 1984 and 1985. He contended further that his \$10.01 per acre bid was reasonable based upon the potential in the Church Buttes Field from the Frontier formation.

The case file forwarded to the Board on February 19, 1986, included an appraisal report approved by BLM on February 14, 1986. No copy of the report had been provided to appellant. By order dated April 22, 1986, the Board directed BLM to provide appellant with a copy of the appraisal report and all non-proprietary exhibits attached thereto. Appellant was granted 30 days from receipt of the report to file a response.

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1/ BLM states that, even though appellant's response was untimely, it was reviewed subsequent to the preparation of the decision letter but found to contain no information that had not been previously considered.

2/ In a May 5, 1986, memorandum filed with the Board and served on appellant, BLM stated that the PEV was \$700 and that it should have been included in the rejection letter sent to appellant.

Appellant submitted a supplementary statement of reasons responding to the appraisal report, in which BLM had used a comparable sales approach, analyzing nine sales in the Church Buttes KGS. Appellant objects to the comparables chosen. He also argues that production would be economically unfeasible, as shown both by BLM's parcel summary table for parcel 205, 3/ and the fact that no one other than appellant bid on the parcel.

The BLM reply notes that:

The five sales closest to [parcel 205] received bids far in excess of what the economics of those properties would have indicated. Sale 4 had a DCF (discounted cash flow) of \$6.27 per acre and brought a high bid of \$980 per acre. Sales 2, 5, 6, and 7 did not have a positive DCF based on the lack of known reserves or on the uncertainty of the reserves. Nevertheless, these sales received high bids of \$1,039, \$707, \$703, and \$350 per acre, respectively. \* \* \* In this area, sales analysis rather than strict DCF computations gives the best indication of the true market value of a property.

(BLM reply at 2).

In a second supplementary statement of reasons filed on March 11, 1988, appellant argues that his position is supported by BLM's issuance of a lease in the Church Buttes KGS for \$20 per acre, the high bid received for the parcel in the February 1987 sale. In its response, BLM argues that the information is not relevant because it was not available at the time of the October 1985 sale. If later sales information is relevant, BLM argues, appellant's position is contradicted by several 1987 sales of parcels closer to parcel 205 than the parcel appellant relies upon. These sales, BLM states, brought high bids ranging from \$135 per acre to \$6,555 per acre.

The principles controlling resolution of this appeal were succinctly stated in Victor P. Smith, 101 IBLA 100, 103-104 (1988):

[1] The Secretary of the Interior has the discretionary authority to reject a bid for a competitive oil and gas lease if the bid is deemed inadequate. 30 U.S.C. § 226(b) (1982); 43 CFR 3120.5(a); MTS Limited Partnership, 95 IBLA 337 (1987); Michael Shearn, 87 IBLA 168, 169 (1985). This Board has consistently upheld that authority, so long as there is a rational basis for the conclusion that the highest bid does not represent fair market value for the parcel. E.g., Clarence Sherman, 82 IBLA 64, 65 (1984); Viking Resources Corp., 80 IBLA 245, 246 (1986). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value of the grant of leases, and the Secretary reserves the right to reject a bid which will not provide a fair return. Viking Resources Corp., supra at 246.

3/ The parcel summary table estimates the drilling cost at \$1,800,000 and the value of the reserves at \$1,089,963.

[2] When exercising the Secretary's authority to reject a high bid, the Department is entitled to rely on the reasoned analysis of its technical experts in matters involving geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Viking Resources Corp., *supra* at 247; L. B. Blake, 67 IBLA 103 (1982). However, when BLM relies on that analysis, it must ensure that a reasoned explanation to support the decision is provided in the record. Mesa Petroleum Co., 81 IBLA 194, 195 (1984). If the record indicates a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, that decision will not be reversed, absent a showing of error, even though the determination may be subject to reasonable differences of opinion. *See Kerr-McGee Corp. v. Watt*, 517 F. Supp. 1209, 1213-14 (D.D.C. 1981).

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Although the Board has held that BLM should provide a rational basis for its determination to reject a high bid, we have also concluded that even where BLM fails to provide a rational basis for its rejection decision or where the high bidder shows BLM has erred in its determination of a minimum acceptable bid value, the high bidder must establish that his bid represents fair market value in order to be awarded the lease. Miller Brothers Oil Corp., 100 IBLA 172 (1987); Burton/Hawks, Inc., 98 IBLA 118, 122 (1987); Southern Union Exploration Co., 97 IBLA 275, 277 (1987).

In further explanation of an appellant's affirmation obligation to establish that its bid represents fair market value, the Board stated in Harris-Headrick, 95 IBLA 124, 126 (1987):

Merely establishing that the Government's presale estimate is too high cannot justify issuance of a lease to any appellant absent a showing that its bid does, indeed, represent fair market value for the parcel in question, because it is possible that even though the Government's estimate may be too high, the appellant's bid could, at the same time, be too low. Thus, while, as a practical matter, an appellant's first avenue of attack will normally be that the Government over-valued the parcel, ultimate success on appeal is dependent upon establishing that its high bid does represent fair market value. In essence, then, an appellant will succeed, if at all, only upon the strength of its case and not merely upon any weakness in the Government's presentation.

Our review of the record satisfies us that BLM's appraisal report provides a rational basis for BLM's conclusion that appellant's bid did not represent fair market value for parcel 205. Although appellant disagrees with the BLM appraisal, he has not shown that BLM erred in its determination of a minimum acceptable bid. Even if he had made such a showing, however, he has clearly failed to meet his additional burden of demonstrating that his bid represents fair market value. Although he asserts in his statement of reasons that his bid is a "reasonable amount," he fails to support his assertion with any analysis or documentation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

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Anita Vogt  
Administrative Judge  
Alternate Member

I concur:

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Gail M. Frazier  
Administrative Judge